

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>DAKOTA ENERGY COOPERATIVE, INC.,</p> <p>Plaintiff/Counter- Claim Defendant,</p> <p>vs.</p> <p>EAST RIVER ELECTRIC POWER COOPERATIVE, INC.,</p> <p>Defendant/Counter- Claim Plaintiff/Cross-Claim Defendant,</p> <p>and</p> <p>BASIN ELECTRIC POWER COOPERATIVE,</p> <p>Intervenor Defendant/Counter- Claim Plaintiff/Cross- Claim Plaintiff.</p>	<p>4:20-CV-04192-LLP</p> <p>ORDER DENYING MOTION TO COMPEL BY DAKOTA ENERGY COOPERATIVE, INC.</p> <p>Docket No. 91</p>
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INTRODUCTION

This matter is pending before the court on the complaint by Dakota Energy Cooperative, Inc. (hereinafter “Dakota Energy”) seeking to extricate itself from a wholesale power contract (“WPC”) with East River Electric Power Cooperative, Inc. (“East River”). Docket No. 1-1 at pp. 2-12. East River removed this matter from South Dakota state court pursuant to 28 U.S.C.

§ 1442(a)(1), asserting that it acted under the direction of a federal officer. Docket No. 1 at pp. 2-3. Basin Electric Power Cooperative (“Basin”) later intervened in the action. Docket Nos. 23 & 38. Now pending is a motion by Dakota Energy to compel East River and Basin to commit to deposition dates for their experts by noon today. Docket No. 91. The parties have consented to this magistrate judge resolving that motion. Id.

FACTS AND DISCUSSION

The district court issued an order bifurcating discovery in this case. All phase one discovery concerning the interpretation of the WPC is to be concluded by November 15, 2021. Docket No. 57. Regarding expert discovery for phase one, the district court ordered that all experts be identified and their reports disclosed by September 27, 2021. Id. at p. 3, ¶ 6. All rebuttal experts must be disclosed by October 18, 2021—one business day from today. Id. All sur-rebuttal experts and their reports must be disclosed by November 1. Id.

Dakota Energy has filed the present motion to compel, its sixth such motion since August 30, 2021.¹ Docket No. 91. In the pending motion, Dakota Energy seeks an order compelling East River and Basin to set up deposition dates for its rebuttal experts by noon today. Dakota Energy cites no authority for its motion.

¹ Dakota Energy filed its motion at 4:05 p.m. CDT expecting a ruling from the court sufficiently in advance of noon today that would allow East River and Basin to set up deposition dates for its experts by noon. This seems a patently unreasonable expectation by Dakota Energy.

Because of the compressed discovery schedule, it may very well be possible that East River and Basin have not yet settled on the selection of their rebuttal experts. As such, it would be fruitless to set up deposition dates for rebuttal experts that work for the lawyers, but potentially not for the selected expert(s). The court finds no good cause for Dakota Energy's motion. It amounts to an attempt to modify the district court's scheduling order by forcing East River and Basin to make a decision today about who their rebuttal experts are instead of doing so next Monday as ordered by the district court.

CONCLUSION

Based on the foregoing the court denies in its entirety Dakota Energy's motion to compel [Docket No. 91].

NOTICE OF RIGHT TO APPEAL

Pursuant to 28 U.S.C. § 636(b)(1)(A), any party may seek reconsideration of this order before the district court upon a showing that the order is clearly erroneous or contrary to law. The parties have fourteen (14) days after service of this order to file written objections pursuant to 28 U.S.C. § 636(b)(1)(A), unless an extension of time for good cause is obtained. See FED. R. CIV. P. 72(a); 28 U.S.C. § 636(b)(1)(A). Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Id. Objections must be timely and specific in order to require review by the district court. Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990); Nash v. Black, 781 F.2d 665 (8th Cir. 1986).

DATED October 15, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Veronica L. Duffy", written over a horizontal line.

VERONICA L. DUFFY

United States Magistrate Judge